

UNITED STATES of AMERICA *ex rel.*  
PATSY GALLIAN, and PATSY GALLIAN,  
Individually  
  
  
  
Plaintiffs,  
v.  
  
  
AMERISOURCEBERGEN CORPORATION,  
AMERISOURCEBERGEN SPECIALTY  
GROUP, AND US BIOSERVICES  
CORPORATION,  
  
  
DEFENDANTS.

Qui Tam Relator Patsy Gallian (“Relator” or “Gallian”) files this Motion for Entry Of Decision On Motions To Reconsider and for Leave To File Amended Complaint, and hereby requests that the Court enter a decision on her: Motion to Reconsider Dismissal of 31 U.S.C. § 3729(a)(1)(G) Cause of Action and Dismissal with Prejudice, Refusing to Grant Leave To Amend [ECF # 66], ECF # 74 and Motion for Leave To File Third Amended Complaint, ECF # 75, and in support would show the Court as follows:

## Background

This is a *qui tam* action brought by the Relator Patsy Gallian (“Relator” or “Gallian”) in the name of the United States, to recover treble damages, civil penalties, costs, fees and expenses arising from knowing concealment and improper avoidance of an obligation to repay overpayments received from Government health-care programs by Defendants AmerisourceBergen Corporation, AmerisourceBergen Specialty Group, LLC and U.S. Bioservices (“Defendants”) in violation of the federal False Claims Act, 31 U.S.C. §§ 3729-32 (“FCA”).

Ms. Gallian filed her original Complaint, ECF # 1, on **May 13, 2016**, *ex parte* and under seal as required by the FCA to allow the Government time to investigate and determine whether intervene in the action.

Relator alleged that starting at least as early as 2009 and continuing to at least as late as 2015, U.S. Bio submitted incorrect information and claims for payment to the Government; that Defendants knew that they were legally obligated to report and pay/refund to the Government overpayments made by the Government; that instead, however, when they recognized or were notified that they had received overpayments from the Government, which were classified as Accounts Receivable “credits” in U.S. Bio’s accounting/financial records, they manipulated U.S. Bio’s financial data to hide overpayments from and credit obligations owed to the Government; that Defendants knowingly concealed Accounts Receivable credits owed to the Government as well as internal coding errors and inaccuracies upon finding or being advised of them and **failed to report and return/refund overpayments** to the Government; and that this knowing, deliberate and ongoing pattern of conduct violated the False Claims Act.

On **April 4, 2019**, the Government filed its Notice of Election To Decline Intervention, **ECF # 11**, and the Court ordered the Complaint be unsealed and served on Defendants, **ECF # 12**. On **October 19, 2020**, Defendants filed the bundled (a) Defendants' Motion To Dismiss, (b) Defendants' Memorandum in Support of Motion To Dismiss, (c) Relator's Response in Opposition to Defendants' Motion To Dismiss, (d) Defendants' Notice of Reply, (e) and Defendants' Reply. **ECF # 66 and attachments 66-1—66-7**. *Two years later*, the Court entered its Order granting the Motion to Dismiss, **ECF # 72**, entered **December 22, 2022**, and on **December 28, 2022**, the Clerk entered its Judgment, **ECF # 23**. Within 28 days, on **January 24, 2023**, Relator timely filed her Motion to Set Aside the Judgment, **ECF # 74**, and Motion for Leave to File Third Amended Complaint, **ECF # 75**. Defendants filed two Responses in Opposition to Relator's Motions, **ECF ## 76, 77**, on **February 7, 2023**, and Relator filed her Reply on **February 15, 2023**, **ECF # 78**.

Therefore, Relators' Motion to Set Aside the Judgment, **ECF # 74**, and Motion for Leave to File Amended Complaint, **ECF # 75**, have been pending and fully briefed for more than two years. Relator therefore requests entry of an order and judgment as follows:

- a. Granting the Motion to Set Aside the Judgment;
- b. Granting Relator's Motion for Leave to file her Third Amended Complaint and deeming it filed on January 23, 2023, the date she filed the Motion for Leave to File her Third Amended Complaint; and upon notice and hearing of a dispositive motion or trial;
- c. Pursuant to 31 U.S.C. § 3729 ordering Defendants to pay damages in an amount equal to three times the amount of actual damages the United States Government has sustained because of Defendants' violations of 31 U.S.C. § 3729, *et seq.*, plus an appropriate civil penalty for each violation of 31 U.S.C. § 3729, *et seq.*;
- d. Relator be awarded a reasonable amount of the Government's recovery as a Relator's Share pursuant to § 3730(d) of the FCA;
- e. Relator be awarded reasonable expenses, reasonable attorneys' fees and costs as provided by 31 U.S.C. § 3730(d)(1);

- f. The United States and Relator be awarded such other and further relief, at law or in equity, as the Court deems just and proper.

Dated: July 17, 2025

Respectfully submitted,

/s/ Samuel L. Boyd

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**Counsel for Relator/Qui Tam Plaintiff**

### **CERTIFICATE OF CONFERENCE**

This is to certify that on January 17, 2025, I attempted to reach counsel for Defendants, Eric Sitarchuk by telephone, and left a voicemail advising that I wished to confer with him regarding the foregoing motion. I followed up with an e-mail asking whether Defendants would join or be unopposed to a motion requesting that the Court enter an order on the fully briefed Motino to Set Aside the Judgment, which has been fully briefed and pending for two years. Mr. Sitarchuk responded on January 27, 2025 that **Defendants do not join this Motion and are not unopposed.**

Sam Boyd, lead counsel for Relator, and I have each attempted to reach counsel for the United States Richard Hayes and counsel for the Defendant States Elizabeth Silverman via phone and e-mail on multiple occasions, including but not limited to:

- January 17, 2025 (e-mail to Mr. Hayes from C. Jobe),
- February 12, 2025 (voicemail to Mr. Hayes from C. Jobe).
- On April 28, 2025, I left lengthy voicemails and sent e-mails seeking to confer with Mr. Hayes and with Elizabeth Silverman, counsel for The States of Alabama, California, Connecticut, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Kansas, Maryland, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Vermont, and Washington.
- On April 29, 2025, Ms. Silverman responded by e-mail to request additional information, and I promptly forwarded to her and Mr. Hayes copies of the Motion to Reconsider, ECF # 74, and The Motion for Leave to Amend, ECF # 75, for which we are seeking entry of a decision.
- On May 1, 2025, Ms. Silverman contacted me by e-mail and said that she would confer with Mr. Hayes and get back to us.
- On May 2, 2025, I contacted Ms. Silverman and received an e-mail response stating that she had reached out to Mr. Hayes again, and that she needs to speak with him before responding to Relator's counsel.
- On May 3, 2025, I reached Ms. Silverman's voicemail again and advised that we hoped to file the motion for entry of decision as soon as possible.
- On May 5, 2025, I contacted Ms. Silverman by e-mail to ask permission to state in the certificate of conference that the States were unable to respond pending conversation with counsel for the United States.
- On May 6, 2025, I sent an e-mail to Mr. Hayes, copying Ms. Silverman, stating that I understood Ms. Silverman had been trying to reach him to confer, and that we would very much appreciate a response.
- Shortly after that e-mail was sent, on May 6, 2025, Sam Boyd sent a follow-up e-mail to Mr. Hayes, copying Ms. Silverman, asking again for a meet and confer. A few minutes later, Mr. Hayes responded, asking whether a call on May 7, 2025 would work. Several more e-mail communications were exchanged, and a conference call was scheduled for May 7, 2025.
- On May 7, 2025, Mr. Hayes, Ms. Silverman, Mr. Boyd, and I joined a conference call and discussed the proposed motion and the procedural posture of this case. Mr. Hayes and Ms. Silverman advised Mr. Boyd and me that they would confer with each other and respond to us within a day of two. We received no response.
- On May 9, 2025, Mr. Boyd followed up by e-mail, providing Mr. Hayes and Ms. Silverman some research regarding the relevant provisions in the False Claims Act and, again, requesting responses for the certificate of conference on this motion.
- On July 15, 2035, I once again phoned Mr. Hayes and Ms. Silverman and left voicemails and followed up with an email requesting a response for this certificate of conference. I received no response. Other than the one inconclusive teleconference, we have not been successful in making constructive contact with either attorney, and

we have no basis to state whether they would join in, oppose, or be unopposed to the motion.

DATED: July 17, 2025

/s/ Catherine C Jobe

**Catherine C Jobe**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon all counsel of record, via the Court's CM/ECF system, this 17th day of July, 2025.

/s/ Catherine C. Jobe